

Before the  
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b),  
Table of Allotments,  
Television Broadcast Stations,  
(Lexington, Kentucky)

MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

To: Chief, Video Services Division

AMENDMENT TO PETITION FOR RULEMAKING

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## SUMMARY

As demonstrated herein, the proposed allotment of Channel 20 to Lexington, Kentucky, would provide substantial public interest benefits by bringing a new local television service to a substantial number of people in the Lexington area, promoting viewpoint diversity in the Lexington television market, and increasing competition in the local advertising market. In addition, the proposed new NTSC facility would help foster the development of new national networks by providing an additional competitive broadcast outlet in a top 100 television market with which to establish a primary affiliation.

Although the proposed allotment of Channel 20 to Lexington is short-spaced to two existing stations, the proposed new NTSC facility would not cause prohibited interference to these stations or any other television station. Furthermore, because this is the last opportunity to amend the NTSC Table of Allotments, a grant of Petitioners' short-spacing waiver request would not open the floodgates to similar waiver requests in the future because there can be no further analog allotments after the close of this filing window. Indeed, as the Commission determined in the *Interim Policy* and *VHF Top 100 Markets*, strict adherence to the Commission's distance separation requirements in this case would achieve a result contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

For all of these reasons, Petitioners request that the Commission amend the TV Table of Allotments by substituting Channel 20 for the existing Channel 62 allotment at Lexington, Kentucky.

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(Lexington, Kentucky)	)	

To: Chief, Video Services Division

**AMENDMENT TO PETITION FOR RULEMAKING**

Pappas Telecasting of America, A California Limited Partnership ("Pappas"), Television Capital Corporation of Lexington ("TC"), and ACME Communications, Inc. ("ACME")<sup>1</sup> (collectively "Petitioners"), by their respective counsel and pursuant to the *Report and Order* in GN Docket No. 01-74, *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, FCC 01-364 (released January 18, 2002) ("*Report and Order*"),<sup>2</sup> hereby amend their pending rulemaking petition to request the substitution of Channel 20 for the existing Channel 62 allotment at Lexington, Kentucky. Accordingly, Petitioners request that the Commission institute a rulemaking proceeding for the purpose of amending Section 73.606(b) of the Commission's rules as follows:

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<sup>1</sup> ACME is the proposed permittee under the applicants' pending settlement proposal.

<sup>2</sup> See also *Public Notice, Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Requests for New NTSC Television Stations on Channels 52-59*, DA 02-270 (released February 6, 2002) ("*Amendment Filing Notice*").

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Lexington, Kentucky	18+, 27-, 36, *46, 62	18+, 27-, 36, *46, 20

In support of this amended petition, the following is stated:

#### **I. Background.**

On July 22, 1996, Pappas filed an application for a new analog station to operate on Channel 62 at Lexington, Kentucky (File No. BPCT-19960722KH). On September 20, 1996, TC and Marri Broadcasting, L.P. ("Marri") filed mutually exclusive applications for the proposed Channel 62 NTSC facility at Lexington (File Nos. BPCT-19960920WQ and BPCT-19960920IM, respectively). Subsequent to the filing of their applications, Congress added Section 309(l) of the Communications Act of 1934, as amended (the "Communications Act"), directing the Commission to waive its rules to encourage settlements among mutually exclusive broadcast applicants.<sup>3</sup> As a result, on January 30, 1998, Pappas, TC and Marri filed a "Joint Request for Approval of Universal Settlement" ("Joint Request") which requested the following: (i) the dismissal with prejudice of Marri's application; (ii) approval of a separate agreement between Pappas and TC whereby the parties agreed to eliminate the mutual exclusivity between their pending applications by merging to form a new entity, Commonwealth Communications, L.L.C. ("Commonwealth"); (iii) the dismissal with prejudice of TC's application; and (iv) the grant of Pappas' application, as amended, to substitute Commonwealth as the surviving applicant.

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<sup>3</sup> See 47 U.S.C. §309(l). Section 309(l) was added to the Communications Act by Section 3002(a)(3) of the Balanced Budget Act of 1997 ("1997 Budget Act"). Pub. L. No. 105-33, 111 Stat. 251 (1997).

On November 22, 1999, the Commission released a *Public Notice*, 14 FCC Rcd 19559 (1999) (“*Mass Media Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*”) (“*Window Filing Notice*”),<sup>4</sup> which, *inter alia*, provided applicants with pending NTSC proposals an opportunity to modify their proposals to eliminate technical conflicts with DTV stations and/or move from channels 60-69. In an effort to encourage settlements among mutually exclusive applicants, the *Window Filing Notice* also announced that, during the window filing period, the Commission would waive Section 73.3525 of its rules which limits the amount of reimbursement that an applicant may receive for the dismissal of its application. 14 FCC Rcd at 19564.

In response to the *Window Filing Notice*, Pappas and TC filed a timely Petition for Rulemaking on July 17, 2000,<sup>5</sup> seeking to substitute Channel 59 for the existing Channel 62 allotment at Lexington. In addition, Petitioners entered into an “Agreement” that proposes to substitute ACME for Commonwealth as the prevailing applicant under the pending settlement proposal. Accordingly, also on July 17, 2000, Petitioners filed a “Supplement to Joint Request for Approval of Universal Settlement.” The parties’ Joint Request and supplement thereto together have been pending before the Commission for over four (4) years.

On March 28, 2001, the Commission released a *Notice of Proposed Rule Making* in GN Docket No. 01-74, *Reallocation and Service Rules for the 698-746 MHz Spectrum*

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<sup>4</sup> On March 9, 2000, the Commission extended the window filing period until July 15, 2000. See *Public Notice*, 15 FCC Rcd 4974 (“*Window Filing Opportunity For Certain Pending Applications and Allotment Petitions For New Analog TV Stations Extended to July 15, 2000*”).

<sup>5</sup> The window filing period closed on Monday, July 17, 2000.

*Band (Television Channels 52-59)*, 16 FCC Rcd 7278 (2001), in which the Commission directed the Mass Media Bureau to “suspend processing of applications and allotment petitions for new analog stations on Channel 59, but to allow limited amendments to specify another channel, if available.” *Id.* at 7292. In the subsequent *Report and Order*, the Commission announced that those parties with a pending NTSC proposal for Channel 59 who had not yet amended their proposal to specify another channel would be afforded a 45-day period in which to do so. *Report and Order* at ¶45. Petitioners are submitting this amended petition pursuant to the 45-day filing opportunity established in the *Report and Order*. *Id.* at ¶191.

## **II. Amended Technical Proposal.**

As stated above, Petitioners request that Section 73.606(b) of the Commission’s rules be amended to substitute NTSC Channel 20 for the existing Channel 62 allotment at Lexington. The proposed Channel 20 facility would operate with 2,500 kW ERP utilizing a Dielectric Model TUA\_C2B directional antenna. *See* attached Engineering Statement at 2. The proposed radiation center above mean sea level is 615 meters. The proposed new analog station would provide an 80 dBu signal over the entire Lexington community. *Id.*

Petitioners have searched for an alternative channel and/or transmitter site combination for the proposed allotment at Lexington that would comply with the Commission’s distance separation requirements. These efforts, however, have been unsuccessful. As reflected in the attached engineering statement, the proposed allotment of Channel 20 at Lexington is short-spaced to Station WBXX(TV), Channel 20, Crossville, Tennessee (94.1 km short), and Station WKYT-TV, Channel 27, Lexington (65.3 km short). *See* Engineering Statement at 1. As a result of these short-spacings, Petitioners are requesting a waiver of Sections 73.610 and 73.698 of the Commission’s rules.

As shown in the attached engineering statement, an OET Bulletin 69 Longley-Rice interference analysis demonstrates that the proposed Channel 20 allotment at Lexington would not cause prohibited interference to any DTV allotments, DTV stations, or pending DTV applications. *Id.* at 2. With respect to short-spaced co-channel Station WBXX, the proposed NTSC facility would cause interference to only 0.027% of WBXX's Grade B service population (368 out of 1,390,888 people), which is well within the Commission's 0.5% rounding tolerance. Moreover, the predicted interference area would be limited to a small portion of Whitley County, Kentucky, which is outside WBXX's DMA.<sup>6</sup> Furthermore, ACME is the licensee of Station WBXX and consents to the negligible amount of interference that the proposed Lexington station might cause to WBXX.

The short-spacing between the proposed Channel 20 facility and Station WKYT-TV involves an N+7 UHF "taboo." An interference analysis indicates that the proposed Channel 20 station would cause interference to only 0.07% of WKYT-TV's Grade B population (467 persons), which also is within the Commission's rounding tolerance. *See* Engineering Statement at 2.

### **III. The Commission Should Waive Its Distance Separation Requirements.**

Petitioners respectfully request that the Commission waive the minimum distance separation requirements contained in Sections 73.610 and 73.698 of the Commission's rules in order to permit the proposed allotment of Channel 20 at Lexington.<sup>7</sup> As demonstrated herein, a grant of the requested waiver would, *inter alia*,

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<sup>6</sup> Station WBXX is located in the Knoxville DMA. Whitley County is located in the Lexington DMA. *See Broadcasting & Cable Yearbook*, pp. B-197, B-201 (2001).

<sup>7</sup> As noted in the attached engineering statement, the proposed directional antenna is a standard Dielectric antenna which the FCC has previously authorized. However, the maximum-to-minimum ratio would exceed the 15 dB limit set forth in Section 73.685(e) (footnote continued on next page)



bring a new television service to a substantial number of people in the Lexington area. The proposed allotment also would help promote the emergence of new national television networks by providing an additional competitive broadcast outlet in a top 100 television market with which to establish a primary affiliation.

**A. This Waiver Request Must Be Given the Requisite “Hard Look.”**

It is well established that the Commission is “required to give waiver requests a ‘hard look’ and may not treat well-pleaded waiver requests in a perfunctory manner.” *VHF Top 100 Markets*,<sup>8</sup> 90 FCC 2d 160, 166 (1982) (reconsideration order), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Indeed, as the D.C. Circuit has made clear:

. . . [A] general rule, deemed valid because its overall objectives are in the public interest, may not be in the “public interest” if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.

*WAIT Radio*, 418 F.2d at 1157. Therefore, in considering this waiver request, Petitioners respectfully submit that the Commission must look beyond its general policy regarding short-spaced allotments, and determine whether the rationale underlying that policy would be undermined in light of the substantial and broad-reaching public interest benefits that

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of the Commission’s rules. If the front-to-back ratio were reduced to 15 dB, the interference caused to Station WBXX would increase to 0.42%, which still is within the 0.5% rounding tolerance. Nevertheless, to the extent a waiver of Section 73.685(e) of the Commission’s rules is necessary, it is hereby requested.

<sup>8</sup> *Petition for Rule Making to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming*, BC Docket No. 20418, *Report and Order*, 81 FCC 2d 233 (1980) (“*VHF Top 100 Markets*”), *recon. denied*, 90 FCC 2d 160 (1982), *aff’d sub nom. Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620 (10th Cir. 1983).

would result from a waiver of its spacing rules, especially considering the unique and extremely limited context in which this waiver request is presented.

### **B. The Commission's Short-Spaced Allotment Policy.**

The FCC has a long history of prohibiting short-spaced allotments. The Commission's strict adherence to a fully-spaced allotment scheme is based on its well-established policy of "preserving the integrity of the Table of Allotments and the mileage separation criteria upon which the Table is based."<sup>9</sup> Accordingly, the Commission has granted short-spaced allotments only in rare cases involving highly unusual circumstances.<sup>10</sup> The Commission has stated that "[s]trict adherence to the spacing requirements reflected in the Table is 'necessary . . . in order to provide a consistent, reliable and efficient scheme of [allotments].'"<sup>11</sup> In applying this principle, the Commission has consistently required that the public interest benefits of a proposed short-spaced allotment outweigh the public interest benefit of maintaining the minimum spacing rules.<sup>12</sup> Where the proponent of a new allotment has failed to demonstrate a compelling need for departing from the established distance separation standards, the Commission generally has not granted a waiver of the minimum spacing rules for allotment purposes. *Id.* Nevertheless, as

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<sup>9</sup> *Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990).

<sup>10</sup> *See VHF Top 100 Markets*, 81 FCC 2d 233.

<sup>11</sup> *In the Matter of Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Pueblo, Colorado), Report and Order*, 10 FCC Rcd 7662, 7667 (1999) (quoting *Chester and Wedgefield, South Carolina*, 5 FCC Rcd at 5572), *vacated and remanded on other grounds, Sangre de Cristo Communications, Inc. v. FCC*, 139 F.3d 953 (D.C. Cir. 1998), *affirmed on remand*, 16 Comm. Reg. (P&F) 610 (1999) ("*Pueblo, Colorado*").

<sup>12</sup> *See Pueblo, Colorado*, 10 FCC Rcd at 7667, citing *London, Kentucky*, 7 FCC Rcd at 5937.

demonstrated below, the Commission has granted short-spaced allotment requests in cases involving unusual circumstances such as those presented by Petitioners' allotment request.<sup>13</sup>

**C. The Commission Has Previously Waived the Distance Separation Requirements to Permit the Allotment of New NTSC Stations.**

In Docket No. 13340,<sup>14</sup> the Commission instituted a rulemaking proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets in order to foster the development of a nationwide competitive television system. The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacings. The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a "squeeze in" procedure would be considered. Many of these proposals, as well as those which arose out of the Commission's *Interim Policy*, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. See, e.g., *Grand Rapids, Michigan*, 21 RR 1737 (1961) (Commission assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market);<sup>15</sup> *Rochester, New York*, 21 RR 1726a (1961) (FCC

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<sup>13</sup> *VHF Top 100 Markets*, 81 FCC 2d 233.

<sup>14</sup> *Interim Policy on VHF Television Channel Assignments*, 21 RR 1695 (1961), *recon. denied*, 21 RR 1710a (1961) ("*Interim Policy*").

<sup>15</sup> In *Grand Rapids*, the Commission allotted Channel 13 to Grand Rapids which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of Channel 7 for a Channel 9 allotment at Alpena, Michigan. *Id.* at 1745. (footnote continued on next page)

assigned third commercial VHF station to the community); *Syracuse, New York*, 21 RR 1754 (1961) (same).

In *VHF Top 100 Markets*, the Commission granted requests for waiver of Section 73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each of these short-spaced allotments was subject to the condition that the new station provide equivalent protection to the existing station to which it was short-spaced. *Id.* at 234.

In granting the petitioners' waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from past Commission practice. Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. *Id.* at 253. Moreover, on reconsideration, the Commission concluded that applying the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the *Sixth Report and Order* in Docket Nos. 8736 *et al.*, *Amendment of Section 3.606 of the Commission's Rules and Regulations*, 41 FCC 126 (1952).

**D. A Grant of the Requested Waivers Would Not Undermine the Commission's Short-Spaced Allotment Policy.**

The Commission's longstanding rationale for prohibiting short-spaced allotments – preserving the integrity of the NTSC Table of Allotments – has little, if any,

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The Commission's action was designed to alleviate the "critical shortage of competitively comparable facilities in major markets . . . ." 21 RR at 1745.

relevance in this unique and limited context in which the licensing of NTSC stations has come to an end. The pending NTSC proposals represent what will be the last analog television stations. Thus, the Commission's interest in preserving the integrity of the NTSC Table has substantially less significance in this narrow context because the pending rulemaking petitions represent the last analog allotment proposals that the Commission will ever process. Indeed, the full Commission recognized the diminished significance of the Table of Allotments in *Achernar Broadcasting Company*, 15 FCC Rcd 7808 (2000) ("*Achernar*"). In that case, the Commission granted an application for a new analog television station to operate on Channel 64 at Charlottesville, Virginia and, in the same proceeding, modified the station's construction permit to specify operation on Channel 19 without initiating a notice and comment rulemaking proceeding. In doing so, the Commission stated as follows:

[D]ue to the imminent switch to digital television, the Analog Table of Allotments has ceased to function as an evolving mechanism to be modified to reflect changing needs and technology. Instead it exists solely to preserve the status quo (and in particular, interference-free analog television service) during the DTV transition. . . . *Adding analog Channel 19 to the Table of Allotments is, in sum, an essentially ministerial act designed purely to ensure the continuing accuracy of the Table.*

15 FCC Rcd at 7821 (emphasis added).

In addition, the "integrity" that the NTSC Table of Allotments may have once had has been completely eviscerated by the paired digital allotments which violate the distance separation requirements to a substantial degree. In electing to assign a paired DTV channel to all eligible NTSC stations, the Commission was forced to forego the minimum distance separations requirements and create many substantial co- and adjacent-channel short-spacings between analog and digital allotments. As a result, the digital allotment scheme is based primarily on interference criteria. Therefore, the Commission's

policy of attempting to preserve the integrity of the NTSC Table no longer can serve as the basis for prohibiting short-spaced analog allotments because the “integrity” of the Table no longer exists. Indeed, at this final stage in the licensing of new analog stations, the FCC’s overriding concern should be to preserve interference-free television service during the DTV transition, rather than attempting to preserve the interstation separation standards which were essentially destroyed by the DTV Table of Allotments.

Furthermore, due to the relatively short time period before the end of the DTV transition period which is scheduled to occur at the end of 2006, the minor short-spacings that would result from the proposed allotment of Channel 20 at Lexington are, in essence, an interim proposal. At the end of the transition period, when television stations are required to return one of their paired channels, the proposed Channel 20 facility at Lexington will be able to move to a fully-spaced allotment for its digital operation.

**E. The Proposed Allotment Would Provide Substantial Public Interest Benefits.**

This amended petition and accompanying waiver request provide another opportunity for the Commission to fulfill the same public interest objectives articulated in the *Interim Policy* and *VHF Top 100 Markets*, which extend far beyond the Lexington television market. By waiving the distance separation requirements and allotting Channel 20 to Lexington, this allotment proposal provides the Commission with an opportunity to help foster the development of new national television networks such as the WB Television Network (“The WB”), the United Paramount Network (“UPN”), the Paxson Network, and emerging Spanish-language networks by providing an additional competitive broadcast outlet in a top 100 television market<sup>16</sup> with which to establish a primary affiliation.<sup>17</sup> In

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<sup>16</sup> The Lexington market currently is ranked as the 66<sup>th</sup> television market. See *Broadcasting & Cable Yearbook*, p. B-201 (2001).

addition, the allotment of Channel 20 to Lexington would (i) bring a new local television service to a substantial number of viewers in the Lexington area, (ii) promote ownership diversity in the Lexington television market, and (iii) increase competition in the local advertising market. Indeed, in light of the increasing consolidation in the media industry, the public interest benefits that would result from Petitioners' allotment proposal have even more importance in today's broadcast environment than those that existed at the time the *Interim Policy* and *VHF Top 100 Markets* were adopted.

**F. Section 309(l) of the Communications Act Requires the Commission to Waive Its Spacing Rules.**

The mutually exclusive applications of Pappas, TC, and Marri for the proposed new television station at Lexington were all filed on or before September 20, 1996.<sup>17</sup> Section 309(l) of the Communications Act provides that, with respect to competing applications for new broadcast stations that were filed before July 1, 1997, the Commission shall:

*waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.*

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<sup>17</sup> The WB and UPN have explained to the Commission in a variety of proceedings that one of their primary challenges in establishing themselves as a nationwide network has been finding a sufficient number of stations with which to affiliate. *See, e.g.,* Comments of The WB Television Network, *Establishment of a Class A Television Service*, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (filed Oct. 30, 1995, Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (filed Aug. 22, 1994); Comments of the UPN, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates*, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

<sup>18</sup> *See* File Nos. BPCT-19960722KH; BPCT-19960920WQ; and BPCT-19960920IM.

47 U.S.C. §309(1)(3) (emphasis added). As stated above, Pappas, TC, and Marri filed their initial settlement proposal on January 30, 1998, which was prior to the 180-day statutory deadline. Therefore, Petitioners respectfully submit that, pursuant to Congress' explicit directive to the Commission that it waive any of its rules necessary to permit parties to effectuate a settlement proposal filed pursuant to the 1997 Budget Act, the Commission should grant their request for waiver of the spacing requirements. Indeed, as demonstrated above: (i) the proposed Channel 20 facility at Lexington will not cause prohibited interference to the short-spaced stations; (ii) the proposed short-spacings will not be increased at the application stage because the Channel 20 facility will co-locate with another station on a new tower structure which will be constructed at the specified allotment reference point;<sup>19</sup> and (iii) the FCC previously has waived its spacing requirements in the allotment context where, as in this case, a grant of the requested waiver would provide substantial public interest benefits.

#### **IV. Conclusion.**

As demonstrated herein, the proposed allotment at Lexington would provide substantial public interest benefits by bringing a new local television service to a substantial number of viewers in the Lexington area, promoting viewpoint diversity in the Lexington television market, and increasing competition in the local advertising market. In addition, the proposed allotment would help foster the development of new national networks by providing an additional competitive broadcast outlet in a top 100 television market with which to establish a primary affiliation.

Despite the short-spacings, the proposed allotment of Channel 20 to Lexington would not cause prohibited interference to any other television station. Furthermore,

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<sup>19</sup> See Engineering Statement at 1.



because this is the last opportunity to amend the NTSC Table of Allotments, a grant of this waiver request would not open the floodgates to similar waiver requests in the future because there can be no further analog allotments after the close of this filing window. Indeed, as the Commission determined in the *Interim Policy* and *VHF Top 100 Markets*, strict adherence to the Commission's distance separation requirements in this case would achieve a result contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

For all of these reasons, Petitioners request that the Commission amend the TV Table of Allotments by substituting Channel 20 for the existing Channel 62 allotment at Lexington, Kentucky. In the event Channel 20 is allotted to Lexington, ACME, the surviving applicant under the Petitioners' pending settlement proposal, will amend the pending application in accordance with the Report and Order issued in this proceeding to specify the new channel, and modify its technical proposal as necessary so that the proposed Channel 20 NTSC facility will not cause harmful interference to any other television station. Upon a grant of its application, ACME will promptly construct and operate the new NTSC facility.

WHEREFORE, in light of the foregoing, Petitioners request that the Commission issue a Notice of Proposed Rule Making proposing to amend Section 73.606(b) of the Commission's rules by substituting Channel 20 for the existing Channel 62 allotment at Lexington, Kentucky.

Respectfully submitted,

PAPPAS TELECASTING OF AMERICA,  
A CALIFORNIA LIMITED PARTNERSHIP

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**TechWare, Inc.**

**Supplement to Technical Details Pertaining  
to  
The Substitution of Analog Channel 20 for  
Analog Channel 62  
at  
Lexington, KY  
February 19, 2002**

**For**

**Acme Television**

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# **Techware Inc.**

**Supplement to Technical Details Pertaining  
to  
The Substitution of Analog Channel 20 for Analog Channel 62  
at  
Lexington, KY  
February 19, 2002**

It has been previously proposed to substitute analog channel 20 for channel 62 at Lexington, KY. The reference coordinates previously proposed

37-48-39 North Latitude and 84-18-01 West Longitude

are now amended to

37-47-24 North Latitude and 84-15-33 West Longitude.

The site change is to allow for co-location with another station on a new tower that will be constructed at this location.

As in the earlier submission the proposed reference coordinates will result in the allotment not being in complete compliance with FCC Rules and Regulations Section 73.610 and Section 73.698 in that it would be short spaced to the following stations:

WBXX-TV Channel 20 CROSSVILLE, TN

Required separation 280.8 - Actual separation 186.7 (94.1 km short)

WKYT-TV Channel 27 LEXINGTON, KY

Required separation 95.7 - Actual separation 30.4 (65.3 km short)

The previous filing requested a wavier of the spacing requirements and noted that the new facility would be engineered and constructed in cooperation with the Crossville, TN station to limit the amount of interference caused. In addition, it was stated that improved receiver design has reduced the need for the n+7 spacing requirement and noted that the FCC has granted similar waiver requests. It is also noted that the proposed facility and the Crossville station will have common ownership and that the owner is willing to accept a reasonable amount of interference to its Crossville facility.

The previous filing however did not propose a facility for the requested allotment. In order to demonstrate that it is possible to design a facility that would limit the interference caused to other stations the following is proposed for the location noted above.

Effective Radiated Power (ERP): 2,500 kW  
Radiation Center Above Mean Sea Level (RCAMSL) 612 m  
Directional Antenna: Dielectric Model TUA\_C2B (Pattern Attached)

Using these parameters an OET Bulletin 69 Longley-Rice interference analysis was performed. That analysis indicates that no interference would be caused to any DTV allotments, DTV authorizations or applied for DTV facilities. In addition, the analysis indicated that interference to WBXX-TV NTSC channel 20 Crossville, TN would be limited to 368 people out of a Grade B service of 1,390,888 or 0.027% of the total population. This interference would occur in a small area of Whitley county Kentucky. Whitley county is not within the Crossville station's DMA and in fact is part of the Lexington, KY DMA.

Furthermore the analysis indicated that interference to WKYT-TV NTSC channel 27 Lexington, KY would only affect 467 people (14 in Menifee county and 453 in Powell county Kentucky). This is only 0.07% of the WKYT-TV Grade B service.

It should be noted that the proposed antenna pattern has a maximum-to-minimum ratio of 38 dB that is more than allowed by FCC Rules Section 73.685(e). However, this is a standard antenna pattern available from Dielectric and antennas with similar ratios have been authorized for other stations. It is further noted that this pattern is actually more restrictive than needed to protect the Crossville station. It was selected as an available "off-the-shelf" pattern that provides the needed protection and avoided the need at this point to specifically design a more appropriate pattern. The actual maximum-to-minimum ratio needed is approximately 19 dB and if the ratio is reduced to 15 dB the interference caused to the Crossville station would still only be 0.42%. If the proposed channel substitution is granted then a more reasonable antenna pattern can be engineered. The proposed pattern only serves to demonstrate that it is possible to protect the Crossville facility.

It is also noted that the above parameters will permit full City Grade coverage of Lexington, KY. It will also provide service to the Lexington area at a level that is on par with the other existing stations in the market thereby providing the public with an additional media source that would otherwise be denied if this facility is not permitted to be built.

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**TechWare, Inc.**  
**14101 Parke Long Court - Suite 206**  
**Chantilly, Virginia 20151-1645**  
**Phone: (703) 222-5842 FAX: 222-5843**

In view of this and for the reasons stated in the previous engineering statement it is believed that a waiver of the spacing requirements of Section 73.610 are justified.

Prepared by:  
William R. Meintel  
TechWare, Inc.



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**TechWare, Inc.**  
**14101 Parke Long Court - Suite 206**  
**Chantilly, Virginia 20151-1645**  
**Phone: (703) 222-5842 FAX: 222-5843**



Exhibit No.  
#1

Date	18 Feb 2002	Channel	20
Call Letters	NEW		
Location	Lexington, KY		
Customer			
Antenna Type	TUA-C2-08/16U-T		

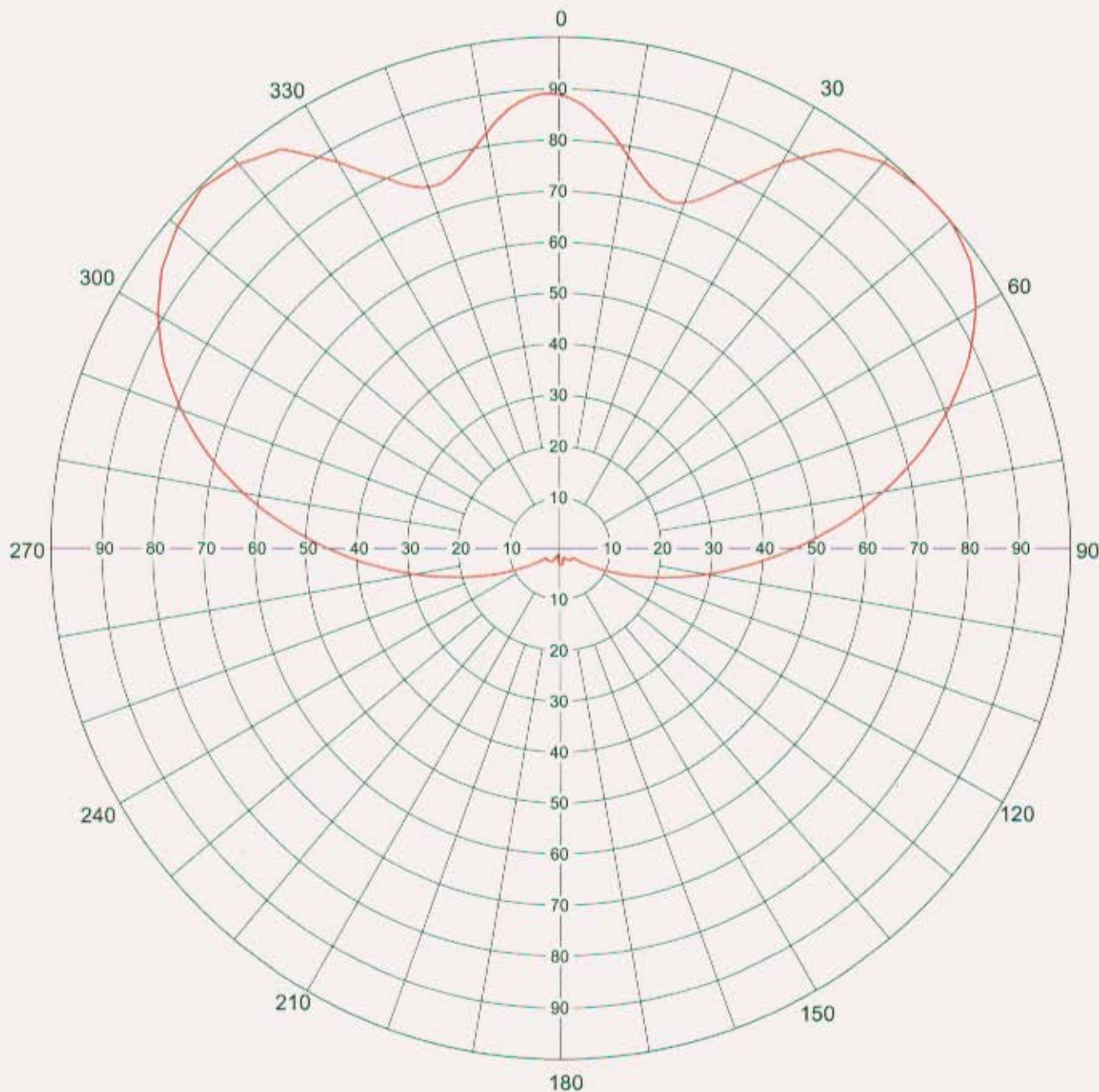
### AZIMUTH PATTERN

RMS Gain at Main Lobe  
Calculated / Measured

2.80 (4.47 dB)  
Calculated

Frequency  
Drawing #

509 MHz  
TUA-C2



Remarks:



Exhibit No.

#1

Date

18 Feb 2002

Call Letters

NEW

Channel 20

Location

Lexington, KY

Customer

Antenna Type TUA-C2-08/16U-T

## TABULATION OF AZIMUTH PATTERN

Azimuth Pattern Drawing # TUA-C2

Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field
0	0.889	45	0.999	90	0.461	135	0.032	180	0.030	225	0.032	270	0.456	315	0.995
1	0.885	46	0.999	91	0.444	136	0.032	181	0.029	226	0.032	271	0.474	316	0.992
2	0.879	47	1.000	92	0.426	137	0.032	182	0.028	227	0.032	272	0.491	317	0.989
3	0.871	48	1.000	93	0.408	138	0.031	183	0.027	228	0.032	273	0.509	318	0.986
4	0.861	49	1.000	94	0.391	139	0.031	184	0.026	229	0.032	274	0.526	319	0.984
5	0.849	50	1.000	95	0.373	140	0.030	185	0.024	230	0.032	275	0.544	320	0.981
6	0.838	51	0.997	96	0.357	141	0.030	186	0.023	231	0.032	276	0.561	321	0.974
7	0.825	52	0.993	97	0.341	142	0.029	187	0.021	232	0.032	277	0.579	322	0.968
8	0.811	53	0.990	98	0.325	143	0.028	188	0.020	233	0.032	278	0.596	323	0.963
9	0.796	54	0.986	99	0.309	144	0.027	189	0.018	234	0.032	279	0.614	324	0.958
10	0.782	55	0.982	100	0.292	145	0.026	190	0.017	235	0.031	280	0.631	325	0.954
11	0.768	56	0.974	101	0.277	146	0.025	191	0.015	236	0.037	281	0.648	326	0.937
12	0.756	57	0.966	102	0.262	147	0.025	192	0.014	237	0.044	282	0.665	327	0.921
13	0.744	58	0.958	103	0.248	148	0.024	193	0.013	238	0.050	283	0.682	328	0.904
14	0.734	59	0.949	104	0.233	149	0.023	194	0.012	239	0.056	284	0.699	329	0.889
15	0.727	60	0.941	105	0.218	150	0.022	195	0.012	240	0.063	285	0.716	330	0.874
16	0.720	61	0.930	106	0.205	151	0.021	196	0.012	241	0.071	286	0.731	331	0.856
17	0.716	62	0.919	107	0.193	152	0.020	197	0.012	242	0.079	287	0.746	332	0.839
18	0.715	63	0.907	108	0.181	153	0.020	198	0.013	243	0.088	288	0.761	333	0.824
19	0.717	64	0.896	109	0.169	154	0.019	199	0.014	244	0.096	289	0.776	334	0.811
20	0.722	65	0.884	110	0.156	155	0.019	200	0.015	245	0.104	290	0.791	335	0.799
21	0.729	66	0.870	111	0.146	156	0.019	201	0.017	246	0.114	291	0.804	336	0.785
22	0.739	67	0.856	112	0.136	157	0.020	202	0.018	247	0.124	292	0.817	337	0.774
23	0.751	68	0.842	113	0.125	158	0.020	203	0.020	248	0.135	293	0.831	338	0.764
24	0.766	69	0.827	114	0.115	159	0.021	204	0.021	249	0.145	294	0.844	339	0.758
25	0.784	70	0.812	115	0.105	160	0.022	205	0.023	250	0.155	295	0.857	340	0.753
26	0.798	71	0.796	116	0.096	161	0.023	206	0.024	251	0.167	296	0.868	341	0.751
27	0.815	72	0.780	117	0.088	162	0.024	207	0.025	252	0.179	297	0.879	342	0.752
28	0.833	73	0.764	118	0.080	163	0.025	208	0.026	253	0.191	298	0.889	343	0.756
29	0.853	74	0.748	119	0.071	164	0.026	209	0.027	254	0.204	299	0.900	344	0.762
30	0.873	75	0.732	120	0.063	165	0.027	210	0.028	255	0.216	300	0.911	345	0.769
31	0.889	76	0.714	121	0.057	166	0.028	211	0.029	256	0.231	301	0.919	346	0.779
32	0.906	77	0.696	122	0.050	167	0.029	212	0.030	257	0.245	302	0.927	347	0.789
33	0.922	78	0.678	123	0.044	168	0.030	213	0.030	258	0.260	303	0.936	348	0.801
34	0.939	79	0.660	124	0.038	169	0.030	214	0.031	259	0.275	304	0.945	349	0.813
35	0.955	80	0.642	125	0.031	170	0.031	215	0.031	260	0.290	305	0.953	350	0.826
36	0.962	81	0.624	126	0.031	171	0.032	216	0.032	261	0.306	306	0.958	351	0.839
37	0.969	82	0.606	127	0.031	172	0.032	217	0.032	262	0.322	307	0.963	352	0.851
38	0.975	83	0.588	128	0.031	173	0.032	218	0.032	263	0.338	308	0.968	353	0.861
39	0.982	84	0.569	129	0.031	174	0.032	219	0.032	264	0.354	309	0.974	354	0.871
40	0.989	85	0.551	130	0.031	175	0.032	220	0.032	265	0.370	310	0.979	355	0.878
41	0.991	86	0.533	131	0.032	176	0.032	221	0.032	266	0.387	311	0.982	356	0.884
42	0.993	87	0.515	132	0.032	177	0.032	222	0.032	267	0.404	312	0.985	357	0.889
43	0.995	88	0.497	133	0.032	178	0.032	223	0.032	268	0.422	313	0.988	358	0.891
44	0.997	89	0.479	134	0.032	179	0.031	224	0.032	269	0.439	314	0.991	359	0.891

Remarks:





Exhibit No.  
#1

Date **18 Feb 2002**  
 Call Letters **NEW** Channel **20**  
 Location **Lexington, KY**  
 Customer  
 Antenna Type **TUA-C2-08/16U-T**

## TABULATION OF AZIMUTH PATTERN

Azimuth Pattern Drawing # **TUA-C2**

Angle	Field	ERP (kW)	ERP (dBk)
0	0.889	1975.8	32.96
10	0.782	1528.8	31.84
20	0.722	1303.2	31.15
30	0.873	1905.3	32.80
40	0.989	2445.3	33.88
50	1.000	2500.0	33.98
60	0.941	2213.7	33.45
70	0.812	1648.4	32.17
80	0.642	1030.4	30.13
90	0.461	531.3	27.25
100	0.292	213.2	23.29
110	0.156	60.8	17.84
120	0.063	9.9	9.97
130	0.031	2.4	3.81
140	0.030	2.3	3.52
150	0.022	1.2	0.83
160	0.022	1.2	0.83
170	0.031	2.4	3.81
180	0.030	2.3	3.52
190	0.017	0.7	-1.41
200	0.015	0.6	-2.50
210	0.028	2.0	2.92
220	0.032	2.6	4.08
230	0.032	2.6	4.08
240	0.063	9.9	9.97
250	0.155	60.1	17.79
260	0.290	210.3	23.23
270	0.456	519.8	27.16
280	0.631	995.4	29.98
290	0.791	1564.2	31.94
300	0.911	2074.8	33.17
310	0.979	2396.1	33.80
320	0.981	2405.9	33.81
330	0.874	1909.7	32.81
340	0.753	1417.5	31.52
350	0.826	1705.7	32.32

### Maxima

Angle	Field	ERP (kW)	ERP (dBk)
50	1.000	2500.0	33.98
135	0.032	2.6	4.08
175	0.032	2.6	4.08
226	0.032	2.6	4.08
315	0.995	2475.1	33.94
358	0.891	1984.7	32.98

### Minima

Angle	Field	ERP (kW)	ERP (dBk)
18	0.715	1278.1	31.07
128	0.031	2.4	3.81
155	0.019	0.9	-0.45
195	0.012	0.4	-4.44
235	0.031	2.4	3.81
341	0.751	1410.0	31.49

Remarks:

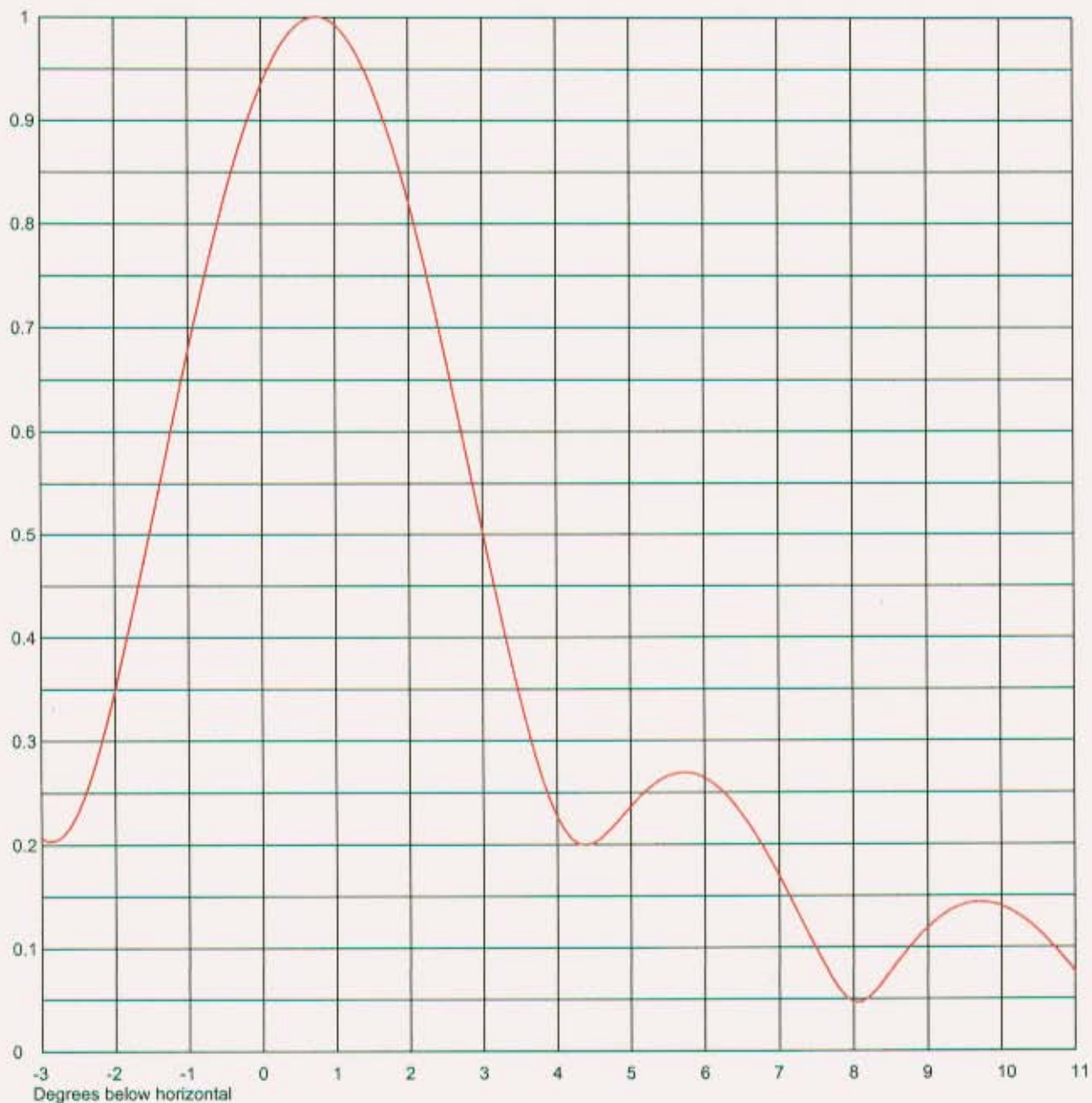


Exhibit No.  
#1

Date	18 Feb 2002	
Call Letters	NEW	Channel 20
Location	Lexington, KY	
Customer		
Antenna Type	TUA-C2-08/16U-T	

### ELEVATION PATTERN

RMS Gain at Main Lobe	15.7 (11.96 dB)	Beam Tilt	0.75 Degrees
RMS Gain at Horizontal	13.7 (11.37 dB)	Frequency	509.00 MHz
Calculated / Measured		Drawing #	08U157075



Remarks:

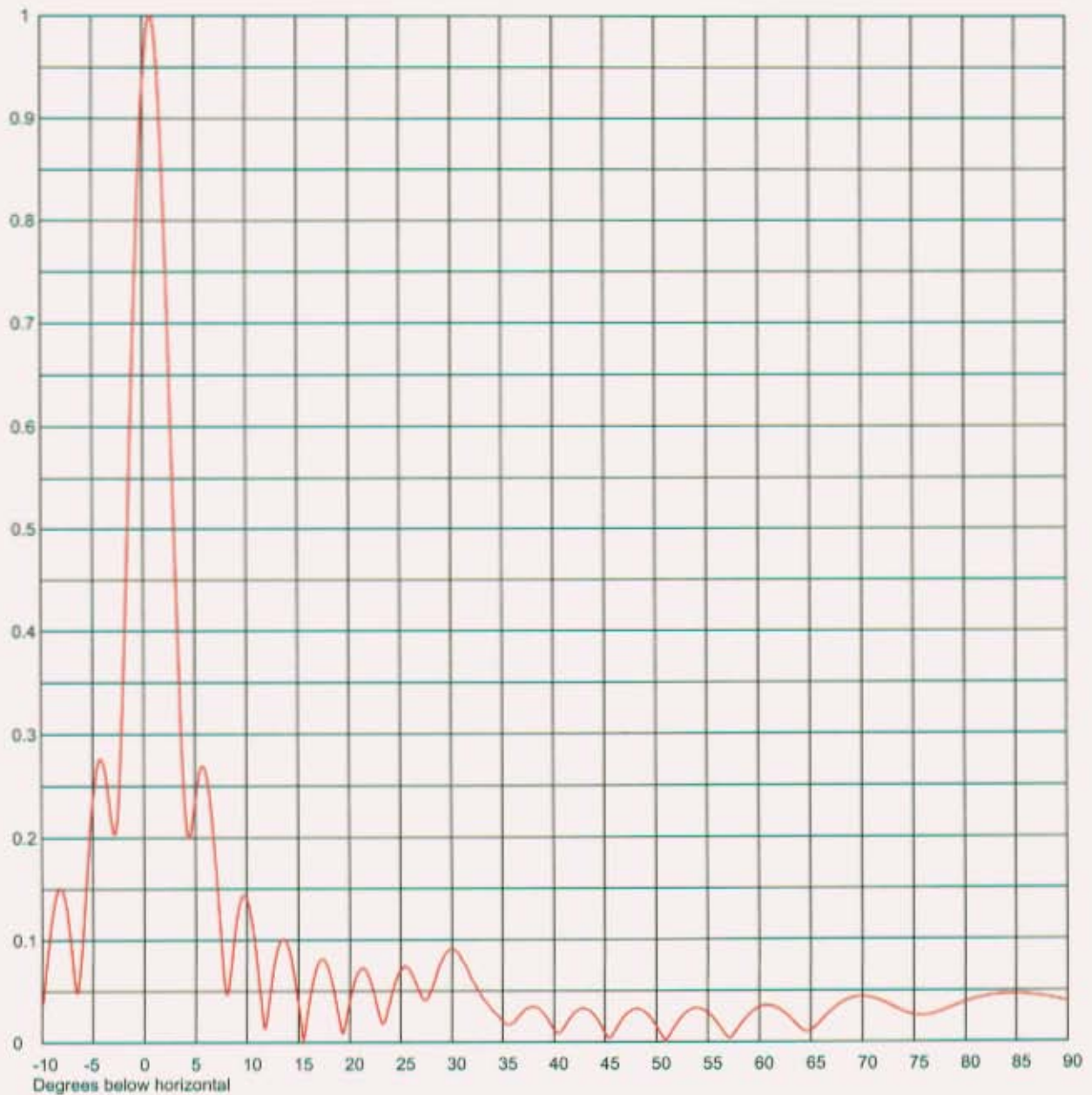


Exhibit No.  
#1

Date	18 Feb 2002	Channel	20
Call Letters	NEW		
Location	Lexington, KY		
Customer			
Antenna Type	TUA-C2-08/16U-T		

### ELEVATION PATTERN

RMS Gain at Main Lobe	15.7 (11.96 dB)	Beam Tilt	0.75 Degrees
RMS Gain at Horizontal	13.7 (11.37 dB)	Frequency	509.00 MHz
Calculated / Measured		Drawing #	08U157075-90



Remarks:



Exhibit No.  
#1

Date **18 Feb 2002**  
Call Letters **NEW** Channel **20**  
Location **Lexington, KY**  
Customer  
Antenna Type **TUA-C2-08/16U-T**


### TABULATION OF ELEVATION PATTERN

Elevation Pattern Drawing # **08U157075-90**

Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field
-10.0	0.028	2.4	0.703	10.6	0.108	30.5	0.088	51.0	0.002	71.5	0.041
-9.5	0.077	2.6	0.638	10.8	0.093	31.0	0.079	51.5	0.010	72.0	0.039
-9.0	0.120	2.8	0.571	11.0	0.075	31.5	0.071	52.0	0.018	72.5	0.036
-8.5	0.146	3.0	0.503	11.5	0.028	32.0	0.060	52.5	0.024	73.0	0.034
-8.0	0.148	3.2	0.436	12.0	0.026	32.5	0.052	53.0	0.029	73.5	0.031
-7.5	0.125	3.4	0.372	12.5	0.065	33.0	0.043	53.5	0.032	74.0	0.029
-7.0	0.080	3.6	0.314	13.0	0.091	33.5	0.037	54.0	0.033	74.5	0.027
-6.5	0.048	3.8	0.264	13.5	0.101	34.0	0.031	54.5	0.031	75.0	0.026
-6.0	0.099	4.0	0.227	14.0	0.093	34.5	0.026	55.0	0.028	75.5	0.025
-5.5	0.173	4.2	0.205	14.5	0.071	35.0	0.020	55.5	0.023	76.0	0.025
-5.0	0.235	4.4	0.199	15.0	0.038	35.5	0.017	56.0	0.017	76.5	0.026
-4.5	0.270	4.6	0.206	15.5	0.001	36.0	0.018	56.5	0.010	77.0	0.027
-4.0	0.272	4.8	0.220	16.0	0.034	36.5	0.024	57.0	0.004	77.5	0.029
-3.5	0.241	5.0	0.236	16.5	0.062	37.0	0.029	57.5	0.007	78.0	0.031
-3.0	0.205	5.2	0.250	17.0	0.077	37.5	0.033	58.0	0.014	78.5	0.033
-2.8	0.203	5.4	0.261	17.5	0.080	38.0	0.034	58.5	0.021	79.0	0.035
-2.6	0.217	5.6	0.268	18.0	0.069	38.5	0.032	59.0	0.026	79.5	0.037
-2.4	0.247	5.8	0.268	18.5	0.049	39.0	0.027	59.5	0.031	80.0	0.038
-2.2	0.292	6.0	0.264	19.0	0.022	39.5	0.020	60.0	0.034	80.5	0.040
-2.0	0.346	6.2	0.253	19.5	0.013	40.0	0.012	60.5	0.035	81.0	0.041
-1.8	0.408	6.4	0.238	20.0	0.038	40.5	0.008	61.0	0.035	81.5	0.043
-1.6	0.474	6.6	0.219	20.5	0.059	41.0	0.014	61.5	0.034	82.0	0.044
-1.4	0.542	6.8	0.195	21.0	0.070	41.5	0.022	62.0	0.031	82.5	0.045
-1.2	0.610	7.0	0.169	21.5	0.071	42.0	0.028	62.5	0.027	83.0	0.045
-1.0	0.677	7.2	0.141	22.0	0.061	42.5	0.032	63.0	0.023	83.5	0.046
-0.8	0.739	7.4	0.112	22.5	0.043	43.0	0.032	63.5	0.018	84.0	0.046
-0.6	0.798	7.6	0.084	23.0	0.023	43.5	0.030	64.0	0.013	84.5	0.046
-0.4	0.850	7.8	0.060	23.5	0.022	44.0	0.025	64.5	0.010	85.0	0.046
-0.2	0.896	8.0	0.047	24.0	0.041	44.5	0.018	65.0	0.011	85.5	0.046
0.0	0.935	8.2	0.050	24.5	0.059	45.0	0.009	65.5	0.015	86.0	0.046
0.2	0.965	8.4	0.066	25.0	0.070	45.5	0.004	66.0	0.020	86.5	0.045
0.4	0.986	8.6	0.085	25.5	0.073	46.0	0.011	66.5	0.026	87.0	0.045
0.6	0.998	8.8	0.103	26.0	0.068	46.5	0.019	67.0	0.030	87.5	0.044
0.8	1.000	9.0	0.119	26.5	0.057	47.0	0.026	67.5	0.035	88.0	0.043
1.0	0.993	9.2	0.130	27.0	0.045	47.5	0.030	68.0	0.038	88.5	0.042
1.2	0.975	9.4	0.139	27.5	0.041	48.0	0.032	68.5	0.041	89.0	0.041
1.4	0.949	9.6	0.143	28.0	0.050	48.5	0.031	69.0	0.043	89.5	0.040
1.6	0.914	9.8	0.143	28.5	0.065	49.0	0.028	69.5	0.043	90.0	0.039
1.8	0.871	10.0	0.139	29.0	0.078	49.5	0.022	70.0	0.044		
2.0	0.821	10.2	0.132	29.5	0.087	50.0	0.015	70.5	0.043		
2.2	0.764	10.4	0.122	30.0	0.090	50.5	0.007	71.0	0.042		

Remarks:

ACME COMMUNICATIONS, INC.

By:   
Lewis J. Paper  
Andrew S. Kersting

Its Counsel

Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, DC 20037-1526  
(202) 785-9700

March 8, 2002

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of March, 2002, a copy of the foregoing  
“Amendment to Petition for Rulemaking” was hand delivered to the following:

Mr. Roy J. Stewart, Chief  
Mass Media Bureau  
Federal Communications Commission  
The Portals II, Room 2-C347  
445 Twelfth Street, S.W.  
Washington, DC 20554


Mr. Keith Larson  
Assistant Chief, Engineering  
Federal Communications Commission  
The Portals II, Room 2-C420  
445 Twelfth Street, S.W.  
Washington, DC 20554

Ms. Barbara Kreisman, Chief  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
The Portals II, Room 2-A666  
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Mr. Clay Pendarvis, Chief  
Television Branch  
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Mass Media Bureau  
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Mr. Gordon Godfrey  
Policy and Rules Division  
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Ms. Nazifa Naim  
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Andrew Kersting